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1 RECORD OF ORAL HEARING
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3 UNITED STATES PATENT AND TRADEMARK OFFICE
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5
6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
8

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10 Ex parte DONG-YOUL LEE
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13 Appeal 2009-004643
14 Application 09/805,929
15 Technology Center 2600
16

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18 Oral Hearing Held: September 10, 2009
19

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21
22 Before JOHN C. MARTIN, KARL D. EASTHOM, and CARL W.
23 WHITEHEAD, JR., *Administrative Patent Judges*.
24

25 ON BEHALF OF THE APPELLANT:
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33 The above-entitled matter came on for hearing on Thursday,
34 September 10, 2009, commencing at 9:00 a.m., at The U.S. Patent and
35 Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Victor
36 Lindsay, Notary Public.
37

P R O C E E D I N G S

MS. BEAN: Calendar No. 20, Mr. Bushnell.

JUDGE MARTIN: Good morning, Mr. Bushnell. How are you today?

MR. BUSHNELL: Good morning, Your Honors. Your security is taking longer and longer. That's the third time I've gone through security this week, and it's just --

JUDGE MARTIN: Do you have a business card for the court reporter?

MR. BUSHNELL: Pardon?

JUDGE MARTIN: Do you have a business card that you can give the court reporter?

MR. BUSHNELL: Yeah, I'll get it before we get started. If it please the Board, I'm Robert E. Bushnell representing this as Samsung Electronics Co., Ltd.

JUDGE MARTIN: If you don't mind, why don't we jump right into the question of what the term call origination message means?

MR. BUSHNELL: That's exactly where I was going and exactly why I'm a little late coming here. I didn't work on this, but the attorney that did kind of beat that to a fare-thee-well in his Reply Brief and his Appeal Brief. The primary reference, Widergreen, is basically a WO gateway, which is called a wireless office gateway. And to repeat yesterday's discussion with this, me and the Examiner, what we got to do is look at the filing dates of these things and we see what's going on. The Widergreen reference is 1996,

1 I think. It just takes a small change or improvement in the ancillary
2 technology to get great results.

3 Now what the call origination message is not, as you probably gleaned
4 from the Briefs on column 2 of Widergreen, it's the wireless office system of
5 Widergreen provides mobile service to corporate mobile terminals, CMTs.
6 And then jumping down to like line 42, the corporate group that includes
7 CMTs is assigned a private numbering plan called a PNP. And then line 45,
8 the WO gateway, this wireless office gateway, is allocated a PNP number
9 series that includes personal numbers of each CMT of the corporate group.
10 Now what the Applicant has, it's one of these, is a call origination message.
11 It's basically a packet message as opposed to a PNP of the primary reference.
12 PNP, just in case you're not up-to-date on that, it's old technology, but it's
13 still used. For example, if you buy a new Panasonic PBX, you would operate
14 that way.

15 JUDGE MARTIN: Well, what is a PNP number series then? I mean
16 --

17 MR. BUSHNELL: Oh, it's a series of numbers, and depending on
18 how many boards you plug into, it's usually one board per 16 local
19 extensions. You can get a lot of local numbers within the building. Now,
20 both the primary reference and the Applicant are -- have the in-building
21 system, what's called a private network. Now what the Applicant is doing,
22 they're using what's called packet switching. Now packet switching is not in
23 Claim 1, it's in the specification when they explain what a call origination
24 message is.

25 Now a call origination message necessarily is an

1 art-recognized term, the class is 455. What I did just before I came over
2 here, I downloaded Choi, et al., U.S. Patent 5 -- or excuse me, I'm sorry,
3 7,509,128 issued on the 24th of March 2001 claiming provisional
4 application filed on the 16th of January 2004. Now, what Choi
5 does -- in other words, it was filed after -- issued before. What Choi does,
6 he has his origination message and he uses that in accordance with the art
7 glossary of 455 discuss --

8 JUDGE MARTIN: I'm sorry, can I interrupt you for a second here?

9 MR. BUSHNELL: Yeah, where are we going with this?

10 JUDGE MARTIN: Yeah, what do we have in the record before that
11 serves as a definition of that term?

12 MR. BUSHNELL: The Applicant's specification and --

13 JUDGE MARTIN: Why isn't that just giving us an example of a --
14 are you saying that we have to -- that we can define that term -- I understand
15 that term to mean that everything that's in Figure 7 has to be there before it's
16 a call origination message?

17 MR. BUSHNELL: It's got to have something other than a telephone
18 number.

19 JUDGE MARTIN: Yeah, but how much?

20 MR. BUSHNELL: Good question, it's a broad term.

21 JUDGE MARTIN: Yeah, and so we want a --

22 MR. BUSHNELL: And it's not in the art, it's more than the telephone
23 number.

24 JUDGE MARTIN: Well, okay, I understand your position, but what
25 do we have in the record that tells us what's required beyond the phone
26 number?

1 MR. BUSHNELL: Okay, what we have is classification for Class
2 455. If the Examiner or any member of the PTO is unfamiliar with the class
3 definitions that should be on the record. And more and more I discover that
4 when I attend Office interviews, the director's never taken the time to
5 educate the examiner on the class definitions. What we have are
6 unsupervised, untrained, inexperienced examiners trying to say a telephone
7 number is a call origination message.

8 JUDGE MARTIN: Well, the -- you know, that's the Examiner's
9 position, but then I think as the person who is presenting us with claims it's
10 your responsibility to say why -- to show that the Examiner is wrong and say
11 here's a definition, put it on the record, and the phone number by itself
12 doesn't satisfy the definition.

13 MR. BUSHNELL: Well, I think we've done that in spades, both in
14 the specifications and in the Briefs.

15 JUDGE MARTIN: But the specification doesn't actually say it's
16 defining the term, it just says it describes a -- in Figure 7 I guess I would say
17 this is an embodiment of an original -- of a call origination message. You
18 just said it doesn't have to have everything that's in Figure 7 to be a call
19 origination message.

20 MR. BUSHNELL: That's correct.

21 JUDGE MARTIN: So how much of that's the definition and how
22 much isn't?

23 MR. BUSHNELL: Well, that's what we should ask the United States
24 Patent and Trademark Office that issued Choi, et al. on 28. He doesn't
25 actually define what's in his origination message at all. Now packet
26 switching was not available when the, the three references were filed. Now

1 what we're not going to do, and I don't see any reason to do it, is annotate as
2 the Harvard Law Review suggested years ago each article starting with
3 "The", each noun, each adverb, and verb throughout the document. It's
4 unnecessary. And then Choi, et al., completely independent from Applicant,
5 didn't have any trouble saying origination message. What is the definition of
6 the telephone number, it's not in the primary reference. In fact, he doesn't
7 actually describe how those telephone numbers are applied. What he's
8 dealing with in the primary reference is a switch. He's addressing the switch
9 with a number, whether he uses an -- converter, I don't know, but he's
10 addressing that switch, that's all he's doing.

11 JUDGE MARTIN: Let me ask you about a particular passage in this
12 reference, Widergreen. Does the Examiner reading the -- I'm sorry, is it
13 your position or the Examiner's position or both that this term call
14 origination message -- we should be talking about the signaling between that
15 gateway and that MSC-112? Is that the link that we're talking about here?

16 MR. BUSHNELL: It would only be one way in Widergreen. It
17 would be addressing the switch at the receiving unit or his base station, that's
18 it.

19 JUDGE MARTIN: But we have this in column 5, lines 7 and
20 following. It says the signaling between WO gateway-124 and MSC-112
21 over interface C may follow any one of several well-known industry
22 standards for MSC to MSC signaling and then it goes on. So I understand
23 your position to be from the briefs that that MSC to MSC signaling, that's
24 not a call origination message.

25 MR. BUSHNELL: No, that's not call origination. When he said
26 industry standard, he's talking about 1996. Now I cited this Choi et al. from

1 Richardson, Texas. I cannot disclaim this is not also the Applicant -- it's
2 assigned to Airwall Communication, but I did handle a number of cases for
3 the applicant from Richardson, Texas, last year and the year before. They
4 were in the nature of what's called MIMO, multiple input/multiple output, in
5 other words, a cell phone. They call it user equipment that has multiple
6 antennas. I don't know if this is an Applicant, but at the time it was filed, it
7 apparently wasn't. This is the only example I had time to download.

8 JUDGE MARTIN: Well, it isn't in the record --

9 MR. BUSHNELL: If you go into 455 --

10 JUDGE MARTIN: -- before us, is it?

11 MR. BUSHNELL: Pardon?

12 JUDGE MARTIN: That has not been presented to the Examiner, has
13 it?

14 MR. BUSHNELL: It wasn't issued.

15 JUDGE MARTIN: All right, well, if it's not in the record before us,
16 we're not going to consider it.

17 MR. BUSHNELL: I think we have to consider everything in the
18 shoes, why not?

19 JUDGE MARTIN: Well, we don't have to consider everything in the
20 shoes in this proceeding. We consider what's in the record.

21 MR. BUSHNELL: Well, since the MPEP suggests when there is an
22 occurrence, it's a Supreme Court opinion or something, after the briefs have
23 been filed, the record should be supplemented. I'd be happy to do that. I
24 think that should be done because, as I said earlier, the art doesn't move at
25 the same pace across all arts. Some arts languish for decades and there's a
26 movement finally because somebody got a good idea or whatever. You take

1 door locks, for example, those things, others continually move until they
2 played out. Where's Velcro today?

3 JUDGE EASTHOM: But at the time you filed, you had a definition
4 for the call origination, right?

5 MR. BUSHNELL: We gave that, yes, and we told you what a typical
6 call --

7 JUDGE EASTHOM: Figure 7 --

8 MR. BUSHNELL: -- origination message should have.

9 JUDGE EASTHOM: You're referring to Figure 7?

10 MR. BUSHNELL: Yes, Figure 7 would be a good example of a call
11 origination message.

12 JUDGE EASTHOM: But there's no proffer of what -- I guess you
13 weren't at that time asked to provide a definition, but we -- I guess under
14 Morris, you know, it's your burden to give us a definition. It's your burden
15 to clearly define the claim terms.

16 MR. BUSHNELL: We did that in the specification.

17 JUDGE EASTHOM: Well, that -- we already agreed that's not a
18 definition. I thought that's an example, I thought we --

19 JUDGE MARTIN: Which part of Figure 7 is necessary to a call
20 origination message?

21 MR. BUSHNELL: Well, at this point in view of the applied art, it
22 could be -- let me go to Figure 7 here. Okay, for example, the type, why is
23 the type important? In yesterday's interview, type was also important. The
24 type is important because one party needs to accommodate the message
25 protocol of the other party. That's specified here. Now that can be done
26 automatically, but in packet switching, which is not what's even suggested

1 by the applied art, not all packets travel the same route. You remember 15,
2 16 years ago when we were doing HDTV, the question of ghost signals and
3 multiple routes, right. I'm not suggesting there's ghost signals here, but
4 there's multiple transmissions. They're not all in a sequence, if they were in
5 a sequence, you'd have continuous service. In other words, no interruption.
6 Packet switching you're dividing the signal, voice, data, video, whatever,
7 into packets. They're transmitted as they're allocated, so the type is
8 important, the length is important. The length determines how the packet is
9 routed. So if you have an opening in quadrature modulation, for example,
10 you might use one length and then on the next nine degrees you'd use a
11 different length that's available. Okay, you have a signal ID, you only need
12 two bites for that. And any of this information which would be included in
13 the Applicant's definition given the spec of call origination message readily
14 distinguishes over the applied art. Why this reference is applied here, I don't
15 know.

16 Yesterday's interview, the Examiner -- there was ten months
17 difference between the primary and the secondary reference and apparently a
18 lot of advancement in the technology in that ten months. Here -- and the
19 Examiner said look, I can give you a 102, I can give you a 103, but the dates
20 are no good. And that's true, everyone agreed on that, and this technology
21 moves and there are quite changes over something filed ten years earlier.
22 That's not a mystery. This prosecution has been voluminous, and this is the
23 best the Examiner could come up with. And the only thing I can guess, I
24 didn't work on it, I didn't meet the Examiner, we're back to Yancy Williams
25 and a bar of Religious soap in what, 1976. If you've ever handled this bar of
26 soap case, the Examiner does not want to take responsibility for issuing it.

1 The bar of soap case I got an opinion from the Board about a year after it
2 was argued signed by Fred McKelvey. He wasn't on the panel under --
3 process. Here, I guess the Examiner or his supervisor is uncomfortable with
4 admitting that the primary reference has nothing more than perhaps a
5 destination address. He doesn't need anything more and there's no reason to
6 supplement his signal. If you dial a telephone number and you keep
7 punching numbers on the key pad, what do you get? You get the telephone
8 number, that's what he's doing with his WO gateway. So, we can say that
9 the claim is too broad for the art, but the art, as evidenced by 455 and its
10 definitions and as evidenced by other issued U.S. Patents, contradicts that.
11 We can't ignore what the Office -- in fact, the Office recognizes the term call
12 origination message as an art-recognized term. How long are these claims
13 supposed to be?

14 JUDGE MARTIN: All you have to do is put in what a call origination
15 message must have so it removes any doubt as to the --

16 MR. BUSHNELL: Well, let's look at the claim. He's got determining
17 whether the mobile station in the public/private common area cell is
18 registered. That's a part of Choi that I -- it's Choi 128 I cited to you. That is
19 not the part of the art applied here. He's transmitting transparently and that
20 means without modification, another issue in this case, the call origination
21 message to one of the plurality of BSCs and determine whether it's not
22 registered. And then determine whether the identification message --
23 identification information for the private mobile communications service is
24 included in the call origination message. Where's the identification
25 information in the primary reference? There's none.

1 JUDGE MARTIN: Can we switch to the question of the scope of the
2 term transparent? You say that means it allows for some modification, but
3 that modification has to be, what, undone before something happens --

4 MR. BUSHNELL: Yes, you're trying to get the signal to the receiver
5 unmodified.

6 JUDGE MARTIN: And in your own specification you talk about
7 modifying part of that Figure 7 information.

8 MR. BUSHNELL: Sure.

9 JUDGE MARTIN: That's -- does that get being unmodified so that
10 you maintain this transparency?

11 MR. BUSHNELL: Well, you have to have something in the call
12 origination message in addition to a telephone number of a destination. And
13 anything in addition to it, yeah, satisfies the ability to modify it. How do
14 you modify the telephone number? Nobody did that, nobody claimed they
15 did that.

16 JUDGE MARTIN: Let me back up a second. So in your
17 specification at page 18, paragraph 35, talks about the PBTMR-54 changing
18 the destination address, and that's in this Figure 7 format.

19 MR. BUSHNELL: Right.

20 JUDGE MARTIN: You're saying that that's consistent with this idea
21 of transparency because, what, that information's not part of the call
22 origination message? Why is that, why is that modification allowed and
23 how is that consistent with the definition?

24 MR. BUSHNELL: The modification is allowed because there's traffic
25 constraints. For one cell area, how many cell phones can you handle
26 simultaneously? Who's calculated that?

1 JUDGE MARTIN: I still don't understand how that's addressing my
2 question --

3 MR. BUSHNELL: They, they didn't teach us -- pardon?

4 JUDGE MARTIN: My question is are you saying that some of the
5 Figure 7 information can be modified and still have this message be
6 described as being transparently handed off or whatever that claim language
7 is?

8 MR. BUSHNELL: Okay, let's look at the claim. I think we're talking
9 about different -- okay.

10 JUDGE MARTIN: We have two kinds of transparency recited here
11 and two different steps.

12 MR. BUSHNELL: Yes, in Claim 16. What I'm saying is that during
13 the transmission often you have a virtual modification of a piece of
14 information for traffic handling purposes.

15 JUDGE MARTIN: Okay.

16 MR. BUSHNELL: Yeah.

17 JUDGE MARTIN: All right, that's all I have on that point. Is there
18 anything else you'd like to say --

19 MR. BUSHNELL: I'd just like to emphasize we can't ignore art-
20 recognized terms. In other words, what's a telephone?

21 JUDGE MARTIN: All right, thank you very much.

22 (Whereupon, the hearing concluded on September 10, 2009.)